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Open-ended Working Group taking forward multilateral nuclear disarmament negotiations[1]

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Taking forward multilateral nuclear disarmament negotiations

Taking control: how non-nuclear-weapon States can take forward multilateral nuclear disarmament negotiations

Submitted by Wildfire

I. Introduction

1. This open-ended working group is not addressing a new problem. The international community has been attempting to make progress on nuclear disarmament for decades, through channels such as the Nuclear Non-proliferation Treaty (NPT), the Conference on Disarmament (CD), the Disarmament Commission, the First Committee of the General Assembly, and others. These attempts have been supported by countless commissions, studies, enquiries and working groups. Many avenues have been explored; many agreements and compromises have been reached; nothing has worked.

2. There is therefore no point in this open-ended working group attempting to do things that have already been tried multiple times, and that have repeatedly failed. While many of the proposals that have been advocated over the years for taking forward nuclear disarmament are perfectly sensible, they have proved in practice to be unworkable. There is no realistic prospect, for example, of the NPT nuclear-weapon states agreeing to negotiate a comprehensive nuclear weapons convention. Repeatedly calling for them to do so will achieve nothing. Similarly, while the entry into force of the Comprehensive Nuclear-test-ban Treaty (CTBT) and the negotiation of a fissile material treaty are both worthy goals, there is no point in simply calling again for them to happen. More generally, calls to "engage" or "include" nuclear-armed states are redundant, given that they have been engaged and included constantly in the NPT, Conference on Disarmament and elsewhere for over 40 years – with no result.

3. The **only** way that this working group can contribute to taking forward multilateral nuclear disarmament is by considering new options that have not yet been tried to exhaustion, and which are designed to avoid the obstacles that have blocked the traditional

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[1] Established pursuant to resolution 70/33 of the General Assembly of the United Nations.

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measures. These new options will, by nature, be unfamiliar and perhaps counterintuitive. But to paraphrase Sherlock Holmes: when you have eliminated the impossible, whatever remains, however unpalatable, must be the way forward.

II. Obstacles to taking forward nuclear disarmament

4. The principal obstacle to progress with nuclear disarmament is deep-seated ambivalence over the goal of nuclear disarmament itself. While the NPT nuclear-weapon states have all made an "unequivocal undertaking" to eliminate their nuclear weapons, and most if not all of the other nuclear-armed States have made similar commitments, they still commonly refer to the "security" and "stability" provided by their nuclear weapons, and consider them legitimate.

5. States in nuclear alliances, despite claiming to support nuclear disarmament and being prohibited by the NPT from acquiring or possessing nuclear weapons themselves, also speak of the enduring importance and legitimacy of nuclear weapons, and state that they will rely on nuclear weapons for their national security "for as long as nuclear weapons exist". Such a posture is obviously incompatible with nuclear disarmament and is a serious obstacle to progress, but for some reason is rarely challenged.

6. For their part, genuine non-nuclear-weapon States (i.e. those that are not in nuclear alliances) also contribute to ambivalence over the goal of nuclear disarmament, since the principal multilateral legal instrument by which they forswear nuclear weapons – the NPT – legitimizes the continuing possession of nuclear weapons by the five nuclear-weapon States. There is currently no international legal instrument that comprehensively and unequivocally outlaws nuclear weapons in the way that the Biological Weapons Convention and Chemical Weapons Convention outlaw the two other types of weapon of mass destruction. There is therefore no means for a state to give international legal expression to its conviction that nuclear weapons are inherently unacceptable in all circumstances.

III. The humanitarian imperative

7. The international initiative to examine the humanitarian consequences of nuclear weapons, and associated risks, began with the Oslo conference in March 2013 and continued with conferences in Nayarit in February 2014 and Vienna in December 2014. The extensive conclusions of these conferences can be reduced to the following two points:

(a) Nuclear weapons affect all states, regardless of who possesses, tests or uses them. They are therefore the responsibility of all States. All States have a direct stake in ensuring their elimination, all states have a legitimate role to play, and all states have a responsibility to act.

(b) The risks posed by nuclear weapons are too great to ignore; action cannot safely be postponed any longer, and the international community cannot afford to wait for the nuclear-armed States to act. All States that **can** act now, **must** act now.

8. To some extent, these points were reflected in the Humanitarian Pledge[2] launched at the Vienna conference in December 2014, and which is now endorsed by 122 States. The states joining the pledge undertake to "identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons" and to cooperate with all stakeholders "to stigmatise, prohibit and eliminate nuclear weapons in light of their

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[2] See http://www.icanw.org/pledge. A form of the pledge was also adopted as resolution 70/48 of the General Assembly.

unacceptable humanitarian consequences and associated risks". But the pledge does not give any indication as to how or when the pledging states will do this.

IV. Scope for action by non-nuclear-weapon States

9. Given the humanitarian imperative for action, and the fact that the nuclear-armed States and their allies have consistently proved unwilling or unable to move forward on nuclear disarmament, the only remaining option is to consider ways that non-nuclear-weapon States can take forward multilateral nuclear disarmament negotiations. The constituency for such multilateral action is more than adequate: 122 States have joined the Humanitarian Pledge; 139 voted in favour of resolution 70/48. Such numbers are easily sufficient to initiate multilateral action in the United Nations or elsewhere, and to negotiate, conclude and bring into force an effective multilateral treaty establishing a global regime.

10. While it would in principle be possible for non-nuclear-weapon States to negotiate a comprehensive nuclear weapons convention that included disarmament and verification provisions, this would have little practical utility. Negotiating detailed and highly technical disarmament and verification provisions without the participation and technical cooperation of those that actually possess the weapons would be largely pointless.

11. In contrast, it would be both straightforward and effective for non-nuclear-weapon states to proceed to negotiate a multilateral treaty that comprehensively prohibits nuclear weapons but not does deal with disarmament or verification. Such a treaty would need to specify the conditions under which nuclear-armed States could join (for example, they might be required to negotiate and conclude a binding disarmament and verification plan before acceding). Unlike the NPT, such a treaty would provide a legal channel for non-nuclear-weapon states to unambiguously delegitimize nuclear weapons. Importantly, the treaty would impose **no additional burdens** on non-nuclear-weapon States, as it could be verified through the existing safeguards system.

12. The obvious question is what effect could such a treaty have on nuclear disarmament, if none of the nuclear-armed states are included? It is of course possible that it would have no effect; this however would simply put it in the same category as everything else that has been tried, so is hardly a reason not to attempt it. Experience with the Biological Weapons Convention and other treaties suggests that even a non-universal treaty with no verification provisions can be highly effective over time in building a global norm against a weapon. In addition, the opposition expressed to date by nuclear-armed states and allies suggests that they believe that such a treaty **would** have a significant normative effect and would constrain to some extent their ability to retain and modernize their nuclear arsenals.

13. The treaty would have particular utility in combating the obstacle posed to nuclear disarmament by nuclear alliance States. Since they are non-nuclear-weapon States parties to the NPT, for whom nuclear weapons are already prohibited, there would be no *prima facie* reason they could not join a ban treaty. Their alliance commitments would make joining awkward, but refusing to join would bring their compliance with the NPT into question. At the very least, the dilemma would be likely to reignite public debate in those countries and force a re-evaluation of policy.

14. Certainly, the treaty would do no harm: it would be fully compatible with, and indeed would support and reinforce, various other measures such as the NPT, CTBT, a fissile material treaty, de-alerting measures, verification exercises, and almost anything else. Contrary to assertions made by several nuclear-armed and allied states, there is no need to choose between a ban treaty and the "step-by-step", "building blocks" or "full spectrum" approach: they can be pursued simultaneously. A ban treaty **is** a step, but one that can be taken immediately, with or without the agreement of nuclear-armed States. Indeed, it is

hard to see how a true "full spectrum" approach would not include a comprehensive legal ban, among other components.

V. Conclusion

15. Based on the experience of the past 40 years of nuclear disarmament efforts, the open-ended working group has only two choices:

(a) Continue with the same approaches as in the past, with the same results; or

(b) Attempt something new, such as negotiating a treaty banning nuclear weapons, with or without the involvement of the nuclear-armed states and their allies.

Non-nuclear-weapon States should take control, and work to ensure that the group chooses the second option.